

CHAPTER 61-16.1

OPERATION OF WATER RESOURCE DISTRICTS

61-16.1-01. Legislative intent and purpose. The legislative assembly of North Dakota recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development, and control of waters in this state, navigable or nonnavigable, surface or subsurface, the control of floods, the prevention of damage to property therefrom, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to protect and promote the health, safety, and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is to establish water resource districts encompassing all of the geographic area of the state, and emphasizing hydrologic boundaries.

61-16.1-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" means any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage, and any artificial drain of any nature or description constructed for the purpose of drainage, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the purpose of drainage when the watercourses or channels drain land within a practical drainage area.
3. "Commission" means the state water commission.
4. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
5. "District" means a water resource district.
6. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
7. "Project" means any undertaking for water conservation, flood control, water supply, water delivery, erosion control and watershed improvement, drainage of surface waters, collection, processing, and treatment of sewage, or discharge of sewage effluent, or any combination thereof, including incidental features of any such undertaking.
8. "Water resource board" means the water resource district's board of managers.

61-16.1-03. Water resource districts - Boundaries. Repealed by S.L. 1985, ch. 678, § 2.

61-16.1-04. Minutes, books, and records. The water resource board shall keep accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management, and business of the district. These books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and residents. The books and records shall be open to public inspection during reasonable business hours.

61-16.1-05. Bonds of treasurer and appointive officers. The treasurer of a district shall be bonded in the amount set by the water resource board but the bond shall not be less than one thousand dollars. Other district employees shall be bonded in any amount set by the board. Every officer or employee of whom a bond is required shall be deemed bonded with the state bonding fund upon notice of that appointment given to the state insurance commissioner by the secretary of the district. Upon notification by the state bonding fund of the premium required, the district treasurer shall remit the same.

61-16.1-06. District budget - Tax levy - Financing by special assessment. The fiscal year of the district begins January first and ends December thirty-first. The water resource board shall estimate the expenses of the district before October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of that county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

61-16.1-07. District may issue warrants in anticipation of taxes levied to pay current expenses. After a district has been established and organized and a water resource board has been appointed, the water resource board, for the purpose of paying current district expenses including per diem, compensation, and expenses of managers and wages or salaries of officers and employees, by resolution, may authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. The warrants shall bear the rate of interest set by the board, which shall not exceed twelve percent per annum on those issues sold at private sale. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The district treasurer shall keep a register in which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. The warrants shall be drawn to the claimant or bearer in the same manner as a county warrant and shall be signed by the chairman of the water resource board and countersigned by the treasurer of the district. The aggregate total amount of warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for that year.

61-16.1-08. County treasurer to collect and remit taxes to district treasurer - Investment of district funds - Expenditure of district funds. The treasurer of each county in which a district, or a part of a district, is situated shall collect all district taxes and special

assessments together with any penalty and interest thereon in the same manner as county taxes are collected, and shall, within twenty days after the close of each month, pay to the treasurer of the district those taxes and assessments collected during the preceding month, and shall notify the secretary of the district of the payment. In June and December of each year, and as the county commission may otherwise require, the district treasurer shall report to each member of the water resource board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each regular meeting of the board the treasurer shall submit to the board a statement of the district's finances.

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or any other officer, employee, or agent of the district authorized by the treasurer to sign on behalf of the treasurer. The authorization shall be in writing and filed with the secretary of the district.

61-16.1-09. Powers of water resource board. Each water resource board shall have the power and authority to:

1. Sue and be sued in the name of the district.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.
3. Accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation, distribution, and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, or any municipality within the district, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, distribution, and use of water.
4. Procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
5. Plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water

channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.

6. Maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district and regulate streams, channels, or watercourses and the flow of water therein by changing, widening, deepening, or straightening the same, or otherwise improving the use and capacity thereof.
7. Regulate and control water for the prevention of floods and flood damages by deepening, widening, straightening, or diking the channels or floodplains of any stream or watercourse within the district, and construct reservoirs or other structures to impound and regulate such waters.
8. Make rules and regulations concerning the management, control, regulation, and conservation of waters and prevent the pollution, contamination, or other misuse of the water resources, streams, or bodies of water included within the district.
9. Do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control, and regulation of the water resources of this state.
10. Construct, operate, and maintain recreational facilities, including beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles, and parking areas, and to establish and enforce rules and regulations for the use thereof.
11. Have, in addition to any powers provided in this chapter, the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.
12. Acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for its use and control both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any other stated power.
13. Convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
14. Authorize and issue warrants to finance construction of water conservation and flood control projects, assess benefited property for part or all of the cost of such projects, and require appropriations and tax levies to maintain sinking funds for construction warrants on a cash basis at all times.
15. Borrow money within the limitations imposed by this chapter for projects herein authorized and pledge security for the repayment of such loans.
16. Order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert to remove from under, within, and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, other debris, and any artificial block which hinders or decreases the flow of water through such bridge or culvert.
17. Order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, order, that, if such destruction is permitted, the party or parties responsible for the destruction must, when the board has determined that such destruction will cause excessive property damage from overflow flooding due to the erosion or blocking of the river channel, plant a shelterbelt which meets the

specifications of the board. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this subsection, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to limit, impair, or abrogate the rights, powers, duties, or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational, or municipal or industrial water supply project.

18. Petition any zoning authority established pursuant to chapter 11-33, 11-35, or 40-47 or section 58-03-13 to assume jurisdiction over a floodplain for zoning purposes when such zoning is required to regulate and enforce the placement, erection, construction, reconstruction, repair, and use of buildings and structures to protect and promote the health, safety, and general welfare of the public within a floodplain area. In the event such zoning authority fails to act or does not exist, the board may request the state water commission to assist it in a study to determine and delineate the floodplain area. Upon completion of such study, the board shall make suitable recommendations for the establishment of a floodplain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the floodplain area.
19. Plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems, or combinations thereof, including sewage and water treatment plants, and regulate the quantity of sewage effluent discharged from municipal lagoons; and contract with the United States government, or any department or agency thereof, or any private or public corporation or limited liability company, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
20. Develop water supply systems, store and transport water, and provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
21. Coordinate proposals for installation, modification, or construction of culverts and bridges in an effort to achieve appropriate sizing and maximum consistency of road openings. The department of transportation, railroads, counties, and townships shall cooperate with the districts in this effort. Each district shall also consider the possibility of incorporating appropriate water control structures, where appropriate, as a part of such road openings.
22. Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.
23. Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.

61-16.1-09.1. Watercourses, bridges, and low water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debris removal of bridges and low water crossings. The

board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be determined by the state engineer. All provisions of this chapter apply to assessments levied under this section except:

- a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.
 - (1) If a board that undertakes a project finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
 - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
 - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
 - c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.
2. Before an assessment may be levied under this section, a public hearing must be held and attended by a quorum of the affected water resource boards and a quorum of the affected boards of county commissioners. The hearing must be preceded by notice as to date, time, location, and subject matter published in the official newspaper in the county or counties in which the proposed assessment is to be levied. The notice must be published at least ten days but not more than thirty days before the public hearing.

61-16.1-09.2. Release of easements - Procedure. When it deems such action to be in the best interests of the district or other political subdivision, a water resource board or governing body of another political subdivision may release easements assigned to it from the state for the construction, operation, and maintenance of dams, along with access to the dams, if the dams are no longer useful.

61-16.1-10. Responsibilities and duties of water resource board. Each water resource board shall:

1. Meet jointly with other water resource boards within a common river basin at least twice each year at times and places as mutually agreed upon for the purpose of reviewing and coordinating efforts for the maximum benefit of the entire river basin.
2. Cooperate with other water resource boards of a common river basin and provide mutual assistance to the maximum extent possible.
3. Exercise jointly with other water resource districts within a river basin to effectively resolve the significant and common water resource management problem or problems of the river basin or region and to jointly develop a comprehensive plan for the river basin or region.
4. Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and carry out to the maximum extent possible the water management policy that upstream landowners and districts that have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. Address and consider fully in the planning of any surface water project the downstream impacts caused by the project. A determination of whether to proceed with the construction of a project shall be based on the following principles:
 - a. Reasonable necessity of the project.
 - b. Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives.
 - c. Consideration of whether the utility or benefit accruing from the project reasonably outweighs the adverse impacts resulting from the project.
6. Require that appropriate easements be obtained in accordance with applicable state and federal law when projects will cause an adverse impact to lands of other landowners.

61-16.1-11. Joint exercise of powers.

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by this title. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint water resource board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board. A joint board created under this section is a political subdivision of the state.
2. The districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may adopt, by resolution, on or before July first of each year, a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts then shall levy by resolution a tax not to exceed two mills upon the taxable valuation of the real property within each district within the river basin or region subject to the joint agreement. The levy may be in excess of any other levy authorized for a district.

3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.
4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by individual districts. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by individual districts. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.
5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting districts after the purpose of the agreement has been completed.
6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.
7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

61-16.1-12. Scope of water resource board's extraterritorial contractual authority - Board may acquire property in adjoining states and provinces. A water resource board shall have the right, power, and authority to enter into contracts or other arrangements for water conservation, water supply, flood control, or other authorized projects with the United States government or any department thereof, with the Canadian government or any department thereof or any of its provinces or municipalities, with persons, railroads, other corporations, or limited liability companies, with public corporations, and state governments of this or other states, with drainage, water resource, conservation, conservancy, or improvement districts, or other such districts in this or other states. Such contracts or arrangements can provide for cooperation or assistance in planning, constructing, maintaining, and operating such projects and in making investigations and reports thereon, and for the carrying out of any other provision of this chapter. A water resource board may purchase, lease, or acquire land or other property in adjoining states or provinces to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. No water resource board of any district shall have the right, power, or authority to connect boundary waters having different natural outlets by artificial means so that the waters of one may be discharged into the other.

61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for certain improvements. A water resource board may enter into an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount that the district will be obligated to pay in accordance with the agreement, over and above any other funds which are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties which in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by

resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the project, and the approximate amount or fraction of the cost which the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file their votes on the proposed project with the secretary of the board to be mailed to each landowner affected by the proposed project as determined by the tax rolls of the county in which the affected property is located. The board may send the material by certified mail or by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The notice must also set forth the time and place where the board shall meet to determine whether the project is approved. The notice must also be published once in a newspaper of general circulation in the district and once in the official county newspaper of each county in which the benefited lands are located. Within five days after the first mailing of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the mailing of the resolution, at which time the board shall determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against a proposed project, then the board may not proceed further with the proposed project. If the board finds that less than fifty percent of votes filed are against the proposed project, the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list all in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24. The provisions of sections 61-16.1-25 through 61-16.1-36 are applicable to the assessments and the special warrants issued pursuant to this section.

61-16.1-13. Master plans. Repealed by S.L. 1985, ch. 678, § 2.

61-16.1-14. Contracts for construction or maintenance of project. If the cost of construction or maintenance of a project does not exceed the amount provided for construction of a public improvement under section 48-01.1-03, the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of the construction or maintenance exceeds the amount provided for construction of a public improvement under section 48-01.1-03, the board must let a contract in accordance with chapters 48-01.1 and 48-02.

61-16.1-15. Financing project through revenue bonds, general taxes, or special assessments - Apportionment of benefits. A water resource board shall have the authority, either upon request or by its own motion, to acquire needed interest in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds. Whenever a water resource board decides to acquire property or interests in property to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessments which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments the water resource board shall carry out to the maximum extent possible the water management policy of

this chapter that upstream landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters.

61-16.1-16. Revenue bonds. Each district shall have the power and authority to issue revenue bonds, not exceeding an aggregate total outstanding of ten million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this chapter. Issuance of revenue bonds must be approved by two-thirds of all of the members of the water resource board. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on the bonds and shall establish rates for the facilities at a sufficient level to provide for the operation of such facilities and for the bond payments. Revenue bonds shall not be a general obligation of any county and shall not be secured by property taxes.

61-16.1-17. Financing of special improvements - Procedure. When it is proposed to finance in whole or in part the construction of a project with funds raised through the collection of special assessments levied against lands and premises benefited by construction and maintenance of such project, the water resource board shall examine the proposed project, and if in its opinion further proceedings are warranted, it shall adopt a resolution and declare that it is necessary to construct and maintain the project. The resolution shall briefly state the nature and purpose of the proposed project and shall designate a registered engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees, after written notice to each landowner, may enter upon any land on which the proposed project is located or any other lands necessary to gain access. The engineer shall prepare profiles, plans, and specifications of the proposed project and estimates of the total cost thereof. The estimate of costs prepared by the engineer shall include acquisition of right of way and shall be in sufficient detail to allow the board to determine the probable share of the total costs that will be assessed against each of the affected landowners in the proposed project assessment district.

61-16.1-18. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing must also specify when and where votes concerning the proposed project may be filed. The assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto, along with a copy of the notice of the hearing, must be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing must not be less than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, must be informed at the

hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

61-16.1-19. Voting on proposed projects. At the hearing, the affected landowners, and any county, township, or city to be assessed, must also be informed when and where votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, have thirty days after the date of the hearing to file their votes with the secretary of the water resource board concerning the project. Once the deadline for filing votes has been reached, no more votes may be filed and no person may withdraw a vote. Any withdrawal of a vote concerning the proposed project before that time must be in writing. When the votes have been filed and the deadline for filing votes has passed, the board shall immediately determine whether the project is approved. If the board finds that fifty percent or more of the total votes filed are against the proposed project, then the vote constitutes a bar against proceeding further with the project. If the board finds that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal begins to run on the date of publication of the notice. As used in this section, "board" means water resource board.

61-16.1-20. Voting right or powers of landowners. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project are as provided in this section. The landowner or landowners of tracts of land affected by the project have one vote for each dollar of assessment that the land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed also has one vote for each dollar of assessment against such county, township, or city. There may be only one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes must be prorated among them in accordance with each owner's property interest. A written power of attorney authorizes an agent to protest a project on behalf of any affected landowner or landowners.

61-16.1-21. Assessment of cost of project. Whenever the water resource board proposes to make any special assessment under the provisions of this chapter, the board, prior to the hearing required under section 61-16.1-18, shall inspect any and all lots and parcels of land, which may be subject to assessment and shall determine from the inspection the particular lots and parcels of lands which, in the opinion of the board, will be especially benefited by the construction of the work for which the assessment is made and shall assess the proportion of the total cost of acquiring right of way and constructing and maintaining such improvement in accordance with benefits received but not exceeding such benefits, against:

1. Any county, township, or city, in its corporate capacity, which may be benefited directly or indirectly thereby.
2. Any lot, piece, or parcel of land which is directly benefited by such improvement.

In determining benefits the board shall consider, among other factors, property values, degree of improvement of properties, productivity, and the water management policy as expressed in

section 61-16.1-15. Property belonging to the United States shall be exempt from such assessment, unless the United States has provided for the payment of any assessment which may be levied against its property for benefits received. Benefited property belonging to counties, cities, school districts, park districts, and townships shall not be exempt from such assessment and political subdivisions whose property is so assessed shall provide for the payment of such assessments, installments thereof, and interest thereon, by the levy of taxes according to law. Any county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such assessments, installments thereof, and interest thereon from its general fund or by levy of a general property tax against all the taxable property therein in accordance with law. No tax limitation provided by any statute of this state shall apply to tax levies made by any such political subdivision for the purpose of paying any special assessments made in accordance with the provisions of this chapter. There shall be attached to the list of assessments a certificate signed by a majority of the members of the board certifying that the same is a true and correct assessment of the benefit therein described to the best of their judgment and stating the several items of expense included in the assessment.

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing. After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for two successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The date set for the hearing may not be less than twenty days after the mailing of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which the assessments are made, or the part of the cost to be paid by special assessment. An assessment may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and shall file the list in the office of the secretary.

61-16.1-23. Appeal to state engineer. After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment had not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the state engineer by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such petition the state engineer shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the state engineer may proceed to correct the same, and the state engineer's correction and adjustment of said assessment is final. Should it appear that, in the judgment of the state engineer, the project has been improperly located or designed, the state engineer may order a relocation and redesign. Such relocation and redesign must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the state engineer in the matter, any landowner or political subdivision who or which claims that the landowner or political subdivision will receive no benefit at all from the construction of a new project may appeal to the state engineer within ten days after the hearing on assessments, the question of whether there is any benefit. The state engineer may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision, but shall only determine if there is any benefit to the landowner or political subdivision, and the determination of the state engineer upon such question is final.

61-16.1-24. When assessments may be made. After the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be

levied have been approved by the water resource board, the board may direct special assessments to be levied for the payment of appropriate costs, and the secretary shall certify to the board the items of total cost to be paid by special assessments so far as they have been ascertained. The certificate shall include the estimated construction cost under the terms of any contract, a reasonable allowance for cost of extra work which may be authorized under the plans and specifications, acquisition of right of way, engineering, fiscal agents' and attorneys' fees for any services in connection with the authorization and financing of the improvement, cost of publication of required notices, and printing of improvement warrants, cost necessarily paid for damages caused by such improvement, interest during the construction period, and all expenses incurred in making the improvement and levy of assessments.

In no event shall any contract or contracts be awarded which exceed, by twenty percent or more, the estimated cost of the project as presented to and approved by the affected landowners.

61-16.1-25. Financial reports - Liability for deficiencies. In June and December of each year and as otherwise required by the county commission appointing the managers of the district, the district treasurer shall report to the water resource board in writing the amount of money in the treasury, the receipts, if any, in the preceding period and the amount and items of expenditure during that period. The report shall be verified and filed with the secretary of the district. A verified copy of the report shall also be filed in the office of the county auditor of each county in which the district lies and shall be open to public inspection.

During the month of January of each year the water resource board shall prepare a complete statement of the condition of the finances of the district for the past year and shall cause the same to be filed with the county auditor of each county in which the district lies on or before February first next following. Such statement shall show separately, and in detail, the condition and resources of each and every assessment fund for the payment of project warrants of the district, including the amount of any anticipated deficit and the apportionment thereof. At its February meeting next following the filing of the statement of condition of any district, the board of county commissioners shall examine the statement and make inquiry regarding same to determine whether or not the district has defaulted or may soon default on payment of its financial obligations as the same become due.

Whenever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to benefited property in each county. If it appears to the board at any time that a deficiency exists or is likely to occur within one year in such project warrant fund for the payment of principal or interest due or to become due on such warrants, the board of county commissioners of each of the counties wherein the district lies, in order to forestall imminent deficiency in such fund or to promptly restore the ability of such fund to pay principal and interest punctually as the same become due, shall advance to such project fund the amount necessary to cover the anticipated deficiency attributable to benefited property in such county. In order to make such advances, the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county, and may issue certificates of indebtedness against levies so made, or shall pay such advances from its general fund. Advances made by the county or counties shall be obligations of the district to be met out of any surplus in the district project warrant fund, and future district budgets and tax levies for the district after provision has been made for necessary current expenses. No tax limitation provided by any statute of this state shall apply to tax levies made by any county for the purpose of making any advances in accordance with the provisions of this section.

61-16.1-26. Reassessment of benefits. The water resource board may hold at any time or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. At least ten days' notice of the hearing must be given by publication in the newspaper or newspapers having general

circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice thereof by ordinary mail to each owner of land whose assessment is proposed to be raised as determined by the records of the recorder or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs apply to any reassessment of benefits carried out under this section. The board may not be forced to make such reassessment more than once every ten years, nor may any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

61-16.1-27. Correction of errors and mistakes in special assessments - Requirements governing. If mathematical errors or other such mistakes occur in making any assessment resulting in a deficiency in that assessment, the board shall cause additional assessments to be made in a manner substantially complying with chapter 40-26 as it relates to special assessments.

61-16.1-28. Certification of assessments to county auditor. When a water resource board, by resolution, has caused special assessments to be levied to cover the cost of constructing a project, the board shall determine the rate of interest unpaid special assessments shall bear, which rate shall not exceed one and one-half percent above the warrant rate. Interest on unpaid special assessments shall commence on the date the assessments are finally confirmed by the board. Special assessments may be certified and made payable in equal annual installments, the last of which shall be due and payable not more than thirty years after date of the warrants to be paid. The secretary of the district shall certify to the county auditor of the county in which the district is situated, or if the district embraces more than one county, to the county auditor of each county in which district lands subject to such special assessments are situated, the total amount assessed against such lands in that county and the proportion or percentage of such amount assessed against each piece, parcel, lot, or tract of land. The secretary of the district shall also file with the county auditor of each county in which district lands lie a statement showing the cost of the project, the part thereof, if any, which will be paid out of the general taxes, and the part to be financed by special assessments. Funds needed to pay the cost of maintaining a project may be raised in the same manner as funds were raised to meet construction costs. If the project was financed in whole or in part through the use of special assessments, the water resource board shall prorate the costs of maintaining projects in the same proportion as were the original costs of construction or, in the event a reassessment of benefits has been adopted, the costs shall be prorated in accordance with the reassessment of benefits as authorized by section 61-16.1-54.

61-16.1-29. Extension of special assessments on tax lists - Collection - Payment to district. The county auditor of each county shall extend the special assessments certified to the county auditor on the tax list of the district for the current year and such assessments, with interest and penalties, if any, shall be collected by the county treasurer as general taxes are collected and shall be paid to the treasurer of the district.

61-16.1-30. Lien of special assessment. A special assessment imposed by a district, together with interest and penalties which accrue thereon, shall become a lien upon the property on which the assessment is levied from the time the assessment list is approved by the water resource board until the assessment is fully paid. Such liens shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. No mistake in the description of the property covered by the special assessment lien or in the name of the owner of such property shall defeat the lien if the assessed property can be identified by the description in the assessment list. This chapter shall be considered notice to all subsequent encumbrancers of the priority of special assessments imposed under this chapter.

61-16.1-31. Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date

and rates as first installments of real estate taxes at the same time and in the same manner as provided in title 57.

If there is no delinquent general property tax against a tract or parcel of land and it is foreclosed for special assessments alone, the notice of foreclosure of tax lien shall state that the foreclosure is for special assessments and a tax deed in such case shall be issued in the usual course of procedure.

61-16.1-32. Collection of tax or assessment levied not to be enjoined or declared void - Exceptions. The collection of any tax or assessment levied or ordered to be levied to pay for the location and construction of any project under the provisions of this chapter shall not be enjoined perpetually or absolutely declared void by reason of any of the following:

1. Any error of any officer or board in the location and establishment thereof.
2. Any error or informality appearing in the record of the proceedings by which any project was established.
3. A lack of any proper conveyance or condemnation of the right of way.

The court in which any proceeding is brought to reverse or declare void the proceedings by which any project has been established, or to enjoin the tax levied to pay therefor, on application of either party, shall order examination of the premises, or survey of the same, or both, as may be deemed necessary. The court, on a final hearing, shall enter an order which is just and equitable, and may order the tax or any part thereof to remain on the tax lists for collection, or if the tax were paid under protest, may order, if justice requires, the whole or any part thereof to be refunded. The costs of such proceedings shall be apportioned among the parties as justice may require.

61-16.1-33. Water resource board may apportion assessments for benefits of a project against a county or city or any tract of land benefited. Whenever a water resource board discovers or ascertains that the county, a township, or city therein, or that any tract, parcel, or piece of land is being benefited by a project and that the county or such township, municipality, tract, piece, or parcel of land was not included in the project area assessed for the cost of construction and maintenance of the project when established, the board shall commence proceedings for reassessment of lands originally assessed for the cost of establishing and constructing such project and shall apportion and assess the part of the balance remaining unpaid, if any, of the cost of such project, and the expense of maintenance, which such county, township, or city and each tract of land found benefited thereby should bear.

Before making such reassessment or reapportionment of benefits, the board shall hold a hearing for the purpose of determining the benefits of the project to the county, such township, or city and to each tract, piece, or parcel of land being benefited. At least ten days' notice of the hearing shall be given by publication in the newspaper or newspapers having general circulation in the county and by mailing notice thereof to each owner of land assessed for the cost of construction and maintenance when the project was established, and by mailing such notice to the governing body of the county, township, municipality, and to the owner, as determined by the records in the office of the recorder or county treasurer of each tract, piece, or parcel of land found to be benefited since the establishment of the project. The provisions of this chapter governing the original determination of benefits and assessment of costs shall apply to the reassessment and assessment of benefits carried out under the provisions of this section.

61-16.1-34. Warrants - When payable - Amounts - Interest - Interest coupons. A district may, at any time after entering into a contract for a project to be financed in whole or in part by special assessments, issue temporary and definitive warrants on the project fund, created for that purpose, in the manner and subject to the limitations prescribed in section 40-24-19. If the warrants are issued to finance a sewer or water project, the net revenues derived from the imposition of service charges to be imposed and collected with respect thereto as provided in section 40-22-16 may be pledged to payment of those warrants, except that the first maturity

date of any such warrant shall not be less than two years from the date of issuance. Warrants issued under this section shall be in such amounts as in the judgment of the water resource board will be necessary for the project. The warrants shall bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on warrant issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. Coupons evidencing the interest for each year or half year, as the case may be, may be attached to the warrants. The warrants shall state upon their face the purpose for which they are issued and the project fund from which they are payable and shall be signed by the chairman of the water resource board and countersigned by the secretary of the district. The warrants shall be payable serially in such amounts as the board determines, extending over a period of not more than thirty years.

61-16.1-35. Warrants may be used in making payments on contract - Warrants payable out of fund on which drawn - May be used to pay special assessments. Improvement warrants may be used in making payments on contracts for construction of the project for which the special assessment fund was created, or may be sold for cash at not less than ninety-eight percent of par and accrued interest, and the proceeds thereof, less accrued interest, shall be credited to the construction account of such fund and shall be used exclusively to pay such contracts and construction costs. Any balance remaining in any construction account after completion of a project shall be transferred to the sinking fund account of the assessment fund. The treasurer of the district shall pay special assessment warrants and any interest coupons attached thereto as they mature and are presented for payment out of the fund on which they are drawn and shall cancel the warrants and any coupons when paid.

61-16.1-36. Refunding special assessment warrants - Purposes for which such warrants may be issued - Payment of warrants. Any district having outstanding special assessment warrants, payable in whole or in part out of collections from special assessments, which are past due or which are redeemable, either at the option of the district or with the consent of the warrant holders, may issue refunding special assessment warrants or bonds if there is not sufficient money in the project fund against which such warrants are drawn to pay the same. The issuance of refunding warrants or bonds shall be authorized by resolution of the water resource board. The resolution shall describe the warrants to be refunded and the amount and maturity thereof. Refunding warrants may be issued for any of the following purposes:

1. Extend the maturities of warrants payable in whole or in part by special assessments.
2. Reduce the interest on such warrants.
3. Equalize the general property tax which the district may be, or may become, obligated to levy in order to cover deficiencies in the fund against which warrants were issued.

Refunding warrants or bonds shall bear such date, be in such date, be in such denominations, and shall mature serially within such time, not exceeding thirty years from date of issuance, as the water resource board shall determine. The average rate of interest on such warrants shall not exceed the average rate of interest on refunded warrants.

The treasurer of the district shall pay special assessment warrants, and the interest coupons attached thereto, as they mature and are presented for payment out of the fund against which they are drawn and shall cancel the warrants when paid.

Any deficiency in any fund created for the payment of district warrants payable in whole or in part out of collections of special assessment taxes shall be the general obligation of the water resource district.

61-16.1-37. Commission, state engineer, and water resource board shall encourage both structural and nonstructural alternatives. The commission, state engineer, and the appropriate water resource board shall encourage both structural and nonstructural

solutions to water management problems within the district by federal and state agencies, private individuals, public and private corporations, and limited liability companies, and shall lend their aid, counsel, and assistance to any such solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, unless specifically exempted therefrom, shall be subject to all the provisions of this chapter.

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

61-16.1-39. Dams or other devices constructed within a district shall come under control of a water resource board. All dams, dikes, and other water conservation and flood control works or devices constructed within any district, unless specifically exempted therefrom, shall, without affecting the commission's or the state engineer's authority relative to such works, automatically come under the jurisdiction of the water resource board for the district within which the dam, dike, works, or device exists or is to be constructed. No changes or modification of any existing dams, dikes, or other works or devices shall be made without complying fully with the provisions of this chapter.

61-16.1-39.1. Petition for maintenance - Bond required. A written petition for maintenance of a project other than an assessment drain may be made to the board under this section. The petition shall designate the maintenance requested. The petition must be signed by six, or if a majority is less than six, by a majority of the landowners within the area benefited by the project. The petitioners shall supply a surety bond in the amount of two hundred fifty dollars. The bond must be for the payment of costs if the board finds the petition was improvidently made.

61-16.1-39.2. Maintenance of project - Exception. If, upon receipt of a petition meeting the requirements of section 61-16.1-39.1, or upon the board's own motion, the board determines a project established under the provisions of this chapter requires maintenance, the board may provide the required maintenance by using the same method used initially to finance the project. Unless otherwise provided by law or agreement, the participation of the state in financing the initial project does not bind the state to finance any maintenance. Any maintenance

financed through special assessments may not exceed the maximum levy established by section 61-16.1-45. This section does not apply to maintenance of assessment drains.

61-16.1-40. When dams constructed by federal agency under control of district.

Any dam, dike, or other water control device or flood control project constructed by or with the assistance of any federal agency but which is not maintained or operated by any federal agency shall become the responsibility of the district where it is located. The district may take any action concerning this dam, dike, or other water control device it deems feasible or necessary.

61-16.1-40.1. Maintenance of federally constructed projects - Assessment district established. If a water resource board enters or has been assigned rights in a contract with a federal agency for construction of a flood control project or soil conservation service project, and the terms of the contract require the water resource board to provide for maintenance of the project after construction, the water resource board may finance in whole or in part the maintenance of the project with funds raised through the collection of a special assessment levied against the land and premises benefited by maintenance of the project. The assessments to be levied may not exceed one dollar and fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed one dollar and fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property. No action is required for the establishment of the assessment district or the assessments except the water resource board must approve the maintenance and assessment therefor by a vote of two-thirds of the members and the board of county commissioners of the county must approve and levy the assessments to be made by a vote of two-thirds of its members.

61-16.1-41. Permit to drain waters required - Penalty. Repealed by S.L. 1987, ch. 642, § 13.

61-16.1-41.1. Removal or placement of fill. Prior to removing or placing any fill adjacent to a watercourse, the person responsible shall provide written notice to the district describing the amount and type of fill to be placed or removed and the location of the activity.

For purposes of this section, "adjacent" means within two hundred feet [60.96 meters] of the bank of the body of water during normal flow or stage.

The requirements of this section do not apply to surface coal mining and reclamation operations for which a permit has been secured from the public service commission pursuant to chapter 38-14.1.

61-16.1-42. Drains along and across public roads and railroads. Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of such road. In instances where it is necessary to run a drain across a highway, the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, when notified by the water resource board to do so, shall make necessary openings through the road or highway at its own expense, and shall build and keep in repair all required culverts or bridges as provided under section 61-16.1-43. In instances where drains are laid along or within the rights of way of roads or highways, the drains shall be maintained and kept open by and at the expense of the water resource district concerned. A drain may be laid along any railroad when necessary, but not to the injury of the railroad, and when it is necessary to run a drain across the railroad, the railroad company, when notified by the water resource board to do so, shall make the necessary opening through such railroad, shall build the required bridges and culverts, and shall keep them in repair.

61-16.1-43. Construction of bridges and culverts - Costs. The water resource board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of such construction shall be charged as part of the cost of constructing the drain, and any such bridge, culvert, or passageway shall be maintained under the authority of the water resource board, and the necessary expense shall be deemed a part of the cost of maintenance.

Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, the cost of constructing such bridge or culvert shall be shared in the following manner:

1. The state water commission may, if funds are available, participate in accordance with such rules and regulations as it may prescribe. The remaining cost shall be borne forty percent by the county and sixty percent by the district which has created the need for such construction.
2. If, however, moneys have not been made available to the commission for participation in accordance with subsection 1, then forty percent of the cost of a bridge or culvert shall be paid by the county and sixty percent shall be charged as cost of the drain to the district.
3. Where such bridges or culverts are constructed with federal financial participation, the costs exceeding the amount of the federal participation shall be borne by the district and county according to the provisions of this section, as the case may be.

61-16.1-44. Culvert and pipe arch bids and acceptance. A water resource board may advertise for bids to supply culverts and pipe arches and may accept one or more low bids. A board may utilize bids for such materials received by the county within which the board has jurisdiction and may accept one or more low bids. The board may then purchase materials from the accepted low bidder or bidders for a period of one year from the date of the original acceptance of the bids.

61-16.1-45. Maintenance of drainage projects. If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for the maintenance may not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands benefited by the drain. The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:

1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.
2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for four years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that may be levied by the board in any four-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs.

61-16.1-46. Establishing new drains in location of invalid or abandoned drain. If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or

voluntarily abandoned by the water resource board, for any reason whatsoever, the board may proceed under the provisions of sections 61-16.1-17 through 61-16.1-22 to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. For the purposes of this chapter, a drain that is not properly maintained shall be considered abandoned. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings, and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

61-16.1-47. Drain kept open and in repair by water resource board. All assessment drains that have been constructed in any district, except township drains, shall be under the charge of the water resource board and it shall be the duty of the board to keep those drains open and in good repair. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any assessment drain when requested to do so by petition of the affected landowners having fifty percent or more of the possible votes, as determined according to section 61-16.1-20.

61-16.1-48. Assessment of costs of cleaning and repairing drains. The cost of cleaning out and repairing an assessment drain or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-16.1-26. In cases where no assessment for construction costs or reassessment of benefits has been made, the water resource board shall make assessments for the cost of cleaning and repairing such drain or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available in accordance with the provisions of this chapter for the establishment of a new project. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

61-16.1-49. Petition for a lateral drain - Bond of petitioners.

1. For the purposes of this section, "lateral drain" means a drain constructed after the establishment of an original assessment drain or drainage system and which flows into such original drain or drainage system from outside the limits of the assessed area of the original drain; provided, that a determination by a water resource board as to whether an existing or proposed drain is a lateral or a new drain shall be conclusive when entered upon the records of the board.
2. All property owners whose property would be affected by a lateral drain may jointly petition the board for the construction of such drain and shall deposit with the board a good and sufficient bond to be approved by the board, conditioned upon the petitioner or petitioners paying all costs of the proposed lateral drain. A petition for a lateral drain shall be sufficient if signed by one or more property owners whose property will be affected by the lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain, the costs of such improvements to the original drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. In the event the board determines that improvements to the original drain are also beneficial to property served by the original drain, the board may assess that portion of the cost of the improvements it determines appropriate to property benefited by the original drain. Unless the petitioners agree to construct the lateral drain, the board, within ten days,

may commence proceedings for the construction of the lateral drain according to the provisions of this chapter. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this chapter, except as provided in this section and with approval of the board. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by the petitioners. The petitioners shall pay into the district treasury the amount so determined, and shall then be allowed to connect such lateral ditches or drains with the original drain under the direction and superintendence of the board, but at their own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

3. Where one or more of the property owners to be benefited by the construction of a lateral drain or ditch petitions the district for the construction of a lateral drain or ditch, the district shall then proceed in the same manner as is used for the establishment of a new drain and thereafter such lateral drain shall constitute a part of the original drain to which it is connected and the affected property shall be a part of such drainage district.

61-16.1-50. Drains having a common outlet may be consolidated. Whenever one or more drains which have from time to time been constructed, empty into a drain that supplies the outlet for waters flowing in all such drains, such drains may by resolution or order of the water resource board, if the cost of construction of such drains has been paid, be consolidated into one drain or drainage system and shall be renumbered and may be renamed.

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than fifteen days, the board shall procure removal of the obstruction and assess the cost of the removal, or the portion the board determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. A landowner aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal.

For the purposes of this section, "an obstruction to a drain" means a barrier to a watercourse, as defined by section 61-01-06, or an artificial drain, which materially affects the free flow of waters in the watercourse or drain.

61-16.1-52. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Repealed by S.L. 1987, ch. 642, § 13.

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If

the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to an appeal.

61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by registered mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer. The state engineer, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the dam, dike, or other device is not removed within such reasonable time as the state engineer determines, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the property of the responsible landowner. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the dam, dike, or other device removed within such reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for dams, dikes, or other devices constructed after August 1, 1999.

61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction. An appeal may be taken to the district court from any order or decision of the water resource board by any person aggrieved. An appellant shall file an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. The undertaking must be conditioned that the appellant will prosecute the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking must be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and is governed by the procedure provided in section 28-34-01.

61-16.1-55. Appeal from decision of water resource board - How to be taken.
Repealed by S.L. 1989, ch. 83, § 36.

61-16.1-56. Time for taking appeal from water resource board decision. Repealed by S.L. 1989, ch. 83, § 36.

61-16.1-57. Filing appeal - Docketing and hearing appeals - Final judgment and sending back. Repealed by S.L. 1989, ch. 83, § 36.

61-16.1-58. Attorney general to assist boards - Employment of counsel. The attorney general shall render legal opinions or such other assistance to water resource boards as is required to be rendered to state officers by section 54-12-01. The water resource board, however, may employ other counsel to advise and represent it in such actions and appeals and in its proceedings.

61-16.1-59. Proceedings to confirm judicially contracts, special assessments, and other acts. Any water resource board, before making any contract, or before levying special assessments, or issuing special assessment warrants, or before taking any special action, may commence a special proceeding in district court by which the proceeding leading up to the making of such contract, levying special assessments, issuing special assessment warrants, or leading up to any other special action, shall be judicially examined, approved, and confirmed. Such judicial proceedings shall comply substantially with the procedure required in the case of judicial confirmation of proceedings, acts, and contracts of an irrigation district.

61-16.1-60. Authorization to organize association of water resource districts.

1. Water resource districts, organized and established pursuant to this chapter, are hereby authorized upon resolution of the water resource boards to organize and participate in an association of districts.
2. The association or associations authorized hereunder shall be organized pursuant to chapter 10-33.

61-16.1-61. Water resource districts - Assumption of assets and liabilities of drain boards. Beginning on July 1, 1981, each water resource district shall assume all assets, liabilities, and obligations of any county drain board whose territory is included within the boundaries of the district. When the jurisdiction of any county drain board is included within two or more districts, the county auditor shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate amount of taxable valuation included in each district, except that special assessment projects and funds, property interests, and physical assets attached to the land shall be assumed by the district in which the project is located. Property interests and physical assets attached to the land shall be assumed by the district in which they are located. Prior to February 1, 1983, and for review by each affected water resource board, each water resource district and county drain board shall have a certified public accountant prepare a final audit of its financial records, including all special assessment funds and obligations, assets, and other liabilities. All necessary actions to accomplish the transfer of assets and obligations under this section shall be complete prior to January 1, 1982.

61-16.1-62. Validating organization and acts of water resource districts and county drain boards. Nothing contained in this chapter shall be construed as impairing, invalidating, or in any manner affecting the validity of acts or proceedings of water resource districts or county drain boards which existed prior to the passage and approval of this chapter.

61-16.1-63. Penalty for violation of chapter. Any person violating any of the provisions of this chapter shall, if no other criminal penalty is specifically provided, be guilty of a class B misdemeanor.